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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. EMANUEL MARTIN SANCHEZ-GONZALEZ, Defendant and Appellant.	C058421 (Super. Ct. No. 06F07352)

A jury found defendant Emanuel Sanchez-Gonzalez guilty of premeditated attempted murder, and sustained allegations that he personally used a deadly weapon and inflicted great bodily injury under circumstances involving domestic violence. The court sentenced him to state prison.

Defendant's sole contention on appeal is that the trial court erred in failing to exclude his custodial statement to the police. We shall affirm the judgment.

As we do not find any error in the trial court's ruling, we are not called upon to assess prejudice, and the circumstances that underlie his convictions are consequently irrelevant. We note only that they involve his surprise attack on his wife in

the bathroom after years of domestic discord, which had grown more extreme in the days before the knifing.

DISCUSSION

I

On the first day of trial (as originally scheduled in July 2007), defendant apparently made an oral motion to suppress his postarrest statement to a sheriff's deputy pursuant to *Miranda* v. *Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda*) on the ground that he had not made an effective implied waiver of his rights under that decision. At a hearing pursuant to Evidence Code section 402, the trial court allowed the introduction of recordings (and a translated transcript) of the interrogation and received the testimony of the deputy. The court continued the hearing because defense counsel was unwell on the second day of trial. Eventually, defense counsel's illness resulted in substitution of counsel and a continuance of the trial until December 2007.

With a different judge and different trial attorneys, defendant made a written motion to suppress his postarrest statement on the same ground as before. Without any reference to the previous proceedings, the court once again allowed the introduction of recordings of the interrogation and the transcript, and received testimony from the arresting officer as well as the sheriff's deputy who interrogated him. We thus assume the earlier testimony did not play any part in the trial court's ruling and disregard it on appeal (though defendant has chosen to cite to the earlier testimony of the deputy rather

than her testimony before the judge who actually ruled on the motion).

According to the police officer who arrested him, defendant approached her as she was putting "stuff" in the trunk of her marked patrol car in the station's parking lot. She was in full uniform. Speaking to her only in Spanish, he made a stabbing gesture and uttered a word that the officer, who was not conversant in Spanish, thought meant spouse. Defendant offered his wrists to her in a gesture she took to be a request to handcuff him. After defendant handed over a Mexican identification card, the officer's partner contacted dispatch and learned that defendant was a suspect in a stabbing. They arrested him and transferred him to the Sacramento County Sheriff's Department.

The investigating deputy testified that she grew up in a bilingual home, speaking and writing both English and Spanish. Other deputies frequently called upon her to translate for them. She had not experienced any difficulty communicating on these occasions, or when speaking with natives during trips to Mexico. However, she was not a certified translator.

The deputy had already spoken with the victim and had a grasp of at least some of the facts before she began to question defendant (who indicated that he preferred being addressed by his middle name). Letting him know that she intended to question him about what had happened, she told him she was going to read from a form that he could look at for himself if he had any questions. She then read her department's standard Spanish-

language *Miranda* advisement form to him, during which he nodded his head. She did not explicitly ask (as provided on the form) whether he understood what she was saying about his rights or solicit an express waiver. He simply nodded when she finished reading the form, at which point the deputy proceeded to question him about what had occurred. She did not get any indication from defendant in the course of the interrogation that he might not understand her, such as inappropriate responses to her questions. Defendant did not appear at any point to be reluctant to talk to her, nor did he request a lawyer. His first response was to admit that he hit his wife a lot, and shortly afterward he admitted stabbing her with a knife in an angry outburst. The deputy did not inquire about defendant's level of education or whether he was literate. She attested to the accuracy of the transcript of the recording. Defendant did not testify or produce any other evidence.

Defense counsel argued in essence that defendant's nods were not affirmative evidence of his knowing and intelligent waiver because people often nod even when they do not understand what someone else is saying. The prosecutor pointed out that defendant was aware before he nodded that if he had any questions about the form he could have asked to read it himself.

The trial court noted that it did not have any evidence that defendant was *incapable* of understanding the basic tenets of *Miranda* rights. Defendant had affirmatively responded "yeah" after the deputy told him that he could read the form for himself if he had any questions. In the recording, defendant

was nodding as she read each advisement from the form. The trial court did not find any indication that defendant's participation in the interrogation was involuntary, particularly given his surrender to the arresting officer. The court believed that defendant's conscience troubled him. Lacking any evidence that defendant was confused at any point, or that his nod at the conclusion of the advisement and his decision to begin talking with the deputy about the crime were anything other than an informed implied waiver of the rights described to him, the court denied the motion.

II

Defendant asserts that the present circumstances do not satisfy the six factors enumerated in *United States v. Garibay* (9th Cir. 1998) 143 F.3d 534, 536-538 for deciding whether a waiver was knowing and intelligent. We are not, however, required to follow the dictates of intermediate federal appellate courts in our evaluation of the issue (*People v. Bradley* (1969) 1 Cal.3d 80, 86), nor are we persuaded that these factors are the sine qua non for finding an effective waiver of *Miranda* rights. We will adhere instead to the usual standard of independently determining from the totality of the circumstances whether a defendant has understood the nature of the rights relinquished and the consequences flowing from their waiver. (*People v. Davis* (2009) 46 Cal.4th 539, 585-586 (*Davis*).)

Defendant cites information from the probation report and from later portions of the interrogation that the parties did

not ask the trial court to review[1] in raising speculations that he was too ill-educated and too ill-informed about American criminal procedure to make an intelligent waiver of his *Miranda* rights. (*Davis*, *supra*, 46 Cal.4th at pp. 585-586 [suspect's particular background, experience, and conduct relevant to analysis].) However, as none of this information played any part in the motion, it is not properly a basis for attacking the court's ruling on appeal. (See *People v. Kelly* (1990) 51 Cal.3d 931, 951.)

The gist of defendant's argument on appeal is that his nods were ambiguous as to whether he understood what he had been told. He argues that the deputy was therefore obliged to make further inquiry regarding his understanding. He also suggests that the deputy's immediate "plunge" into asking about what had happened "likely conveyed" the impression that he no longer had any choice about answering her questions.

Defendant listened in his native language to his rights under *Miranda*, aware that he could ask to see the form itself if there was something that he did not understand. Objectively viewed, he evinced willingness to speak with the deputy (in accord with his earlier surrender to the officer for the

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[1] The court recited for the record that its review of the recording of the interrogation involved "the first portion of what's been marked as People's Exhibit 1. It contains that portion which includes the Miranda waiver and responses, and the [nonverbal] responses . . . . [¶] . . . [¶] . . . The tape [*sic*] was then stopped after [the deputy began to question defendant] because it went into the content which isn't relevant for these proceedings."

stabbing). If in fact defendant subjectively was left confused, either as a result of some speculative inadequacy in the deputy's fluency in Spanish or a speculative inability to grasp the not particularly complex concepts involved in *Miranda* rights, it was incumbent upon him to present some evidence to support these claims. (Cf. *People v. Rogers* (1985) 172 Cal.App.3d 502, 511-513 [in absence of evidence defeasing intent embedded in conduct (that defendant was providing knowing aid to accomplice), such intent may be regarded as established].) He cannot successfully challenge *evidence* that establishes what otherwise appears for all purposes to be an implied waiver with mere speculation on appeal.

DISPOSITION

The judgment is affirmed.

RAYE, J.

We concur:

SCOTLAND, P. J.

HULL, J.